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5 Attorney for Petitioner

6 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

7 **FOR THE COUNTY OF LOS ANGELES**

8 ADRIAN RISKIN,
9

10 Petitioner,

11 vs.

12 HOLLYWOOD MEDIA DISTRICT PROPERTY
13 OWNERS ASSOCIATION,

14 Respondent.

Case No. BS166075

PETITIONER'S NOTICE OF RULING

15
16 TO RESPONDENT AND ITS ATTORNEY OF RECORD:

17 PLEASE TAKE NOTICE that this matter came on for hearing on January 30, 2018, on
18 Petitioner's Petition for Order Compelling Disclosure Pursuant to Public Records Request.
19 Appearing for Petitioner was Colleen Flynn. Appearing for Respondent was Jeffrey Briggs.
20

21 After argument of counsel, the Court ordered Respondent to produce documents to
22 Respondent as set forth in the attached minute order.

23 DATED: February 7, 2018

24 **COLLEEN FLYNN**
25 Attorney for Petitioner

26
27 By /s/Colleen Flynn
Colleen Flynn

28 PETITIONER'S NOTICE OF RULING

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 01/30/18

DEPT. 82

HONORABLE MARY H. STROBEL

JUDGE

N. DIGIAMBATTISTA

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

2

B. HALL C.A.

Deputy Sheriff

J HOLLIFIELD CSR 12564

Reporter

9:30 am

BS166075

Plaintiff

Counsel

COLLEEN FLYNN (X)

ADRIAN RISKIN

VS

Defendant

Counsel

JEFFREY C. BRIGGS (X)

HOLLYWOOD MEDIA DISTRICT PROPER
OWNER ASSOCIATION

NATURE OF PROCEEDINGS:

STATUS CONFERENCE

Matter comes on for hearing.

With regard to the petition for writ of mandate, the court adopts its tentative ruling as modified as the order of the court and is set forth in this minute order.

Petitioner Adrian Riskin ("Petitioner") seeks a writ of mandate directing Respondent Hollywood Media District Property Owners Association ("Respondent") to conduct a new search for, and to produce, records responsive to Petitioner's request for certain emails of executive director Lisa Schechter. Petitioner also seeks a writ directing Respondent to produce all responsive records it identified in a search conducted after this lawsuit was filed, or to submit for in camera review those records withheld by Respondent as exempt from disclosure.

Statement of the Case

Petitioner's CPRA Requests

On December 8, 2015, Petitioner requested from Respondent "all emails sent to or from lisa@mediadistrict.org during the period (inclusively) between her first day on the job and

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today." (AR 1.) Schechter became the executive director of Respondent on October 1, 2015. (Schechter Decl. ¶ 1.)

On March 18, 2016, Petitioner requested from Respondent "all emails to or from you and anyone at the domain lacity.org or any its subdomains from between December 9, 2015 and March 18, 2016." Petitioner also requested all emails between Schechter and Laurie Goldman or Kerry Morrison during that period. (AR 2.)

Respondent's Searches and Responses

On December 21, 2015, Petitioner asked Respondent's attorney, Jeff Briggs, for a status update on his December 8, 2015 CPRA request. The next day, Briggs responded that production of the emails "is going to take some time because they will have to be reviewed for possible exemptions." Petitioner responded, "No worries, everyone's busy. I understand that the emails will take a while." (AR 2.)

On February 9, 2016, Petitioner sent an email directly to Schechter about the emails. That day, Briggs responded: "Adrian, we are working on this, both logistically for provision of electronic records in a readable format, and volume-wise, as there are over a thousand (I believe) for the

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subject period." (AR 50.) On February 12, 2016, Briggs stated: "we are having major volume and system translation issues. We definitely will have some exempt emails." (AR 51.)

On March 21, 2016, Briggs produced one responsive email. (Riskin Decl. ¶ 14; AR 61.) On March 27, 2016, Briggs produced 97 files. According to Petitioner, only 5 were responsive. The others were duplicates or emails from outside the requested time frame. (Riskin Decl. ¶ 15; AR 58-59.)

On June 20, 2016, Petitioner's counsel, Colleen Flynn, sent a letter to Schechter and Briggs demanding compliance with the CPRA requests by July 1, 2016. (AR 71-72.) On July 1, 2016, Briggs responded that "evidently I somehow managed to send responsive records only to myself, likely a function of a new filesharing technology." (AR 80.) Briggs produced 1,455 files. Accordingly to Petitioner, only 275 were responsive. The remaining 1,180 were duplicate files or outside the requested time frames. (Riskin Decl. ¶ 20.)

In his July 1, 2016 email, Briggs stated that the only responsive records exempt from production were attorney-client communications and some drafts. (AR 81.) Briggs advised that there were very few Schechter emails "prior to the first part of 2016 due to a number of email and server issues" when

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Schechter commenced work, and also because she did not use email much during that period. (Ibid.) On July 27, 2016, Briggs stated "my client has searched diligently for responsive records and has produced all it has (other than those that are exempt)." (AR 83.)

On April 18, 2017, in response to a request from Petitioner's counsel, Briggs indicated that Schechter would conduct a new search for the requested emails. (Flynn Decl. ¶ 3; AR 38.) On September 26, 2017, Flynn sent an email to Briggs asking a number of questions about the search, including "who did the search?" and "what search criteria was used." (AR 64.) In his response, Briggs stated, among other things: "An additional search was done, and no additional responsive records were found, but we also searched others' emails that could show some of Lisa's emails ... -- that search revealed no responsive records that haven't already been produced in response to other PRA requests from your client or which are exempt under the deliberative process exception. We also found a handful of hard copies of Lisa's exchanges with the city's 311 website... and of misc emails that were printed out but which are also exempt." (AR 65.) With regard to the search criteria used, Briggs stated: "SEPTEMBER 1 2015-JUNE 2016, SCHECHTER." (AR 67.)

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Respondent produced the non-exempt hard copies referred to in the September 26, 2017 correspondence. (Schechter Decl. ¶ 4; Briggs Decl. ¶ 4; AR 67, 73-79.)

Responsive Schechter Emails Obtained from other Agencies

Petitioner submits emails to or from Schechter that he obtained from the City of Los Angeles and other agencies, and not from Respondent. Petitioner contends these emails are responsive to his CPRA requests. (Riskin Decl. ¶ 21; see AR 14-36.) The court analyzes these emails below.

Procedural History

On November 14, 2016, Petitioner filed his verified petition for writ of mandate. On September 28, 2017, Petitioner filed his opening brief and administrative record. On October 27, 2017, Respondent filed its opposition brief and supplemental administrative record. On November 13, 2017, Petitioner filed his reply and supplemental administrative record.

The petition came for hearing on November 28, 2017. The court adopted its tentative ruling as the order of the court, with certain modifications made based on argument at the hearing. The court issued

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the following order:

Respondent is ordered to produce a privilege log identifying the responsive records it has withheld and the claimed exemptions for each record. Respondent should also file and serve a supplemental opposition, not to exceed 7 pages. Petitioner may file and serve a supplemental reply, not to exceed 7 pages. The supplemental opposition and reply should only address the claimed exemptions, and not any other issues....

Respondent is also ordered to review all files from the latest search to ensure that all responsive documents have been produced.

Counsel for respondent is to file a declaration and log produced to petitioner by January 11, 2018. (Court File, Minute Order filed 11/28/17.)

The court set a status conference for January 30, 2018.

On January 11, 2018, Respondent filed its "report and exemption log" and declaration of attorney Jeffrey Briggs. On January 25, 2018, Petitioner filed a supplemental brief, and declarations of Colleen Flynn, Adrian Riskin, and Dwight D. Cook.

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Petitioner's supplemental brief is 12 pages. The court's November 28, 2017 minute order limited the parties' supplemental briefs to 7 pages. Pages 10 to 12 of Petitioner's supplemental brief addresses an argument that "Mr. Briggs [Respondent's counsel] has been emboldened to violate the CPRA by this litigation." This argument exceeds the scope of the supplemental briefing. Respondent has not had the opportunity to respond. Exercising its discretion, the court disregards section 3 at pages 10 to 12 of Petitioner's supplemental brief. New issues raised in reply are improper and may be disregarded. (Regency Outdoor Advertising v. Carolina Lances, Inc. (1995) 31 Cal.App.4th 1323, 1333.)

Summary of Applicable Law

Pursuant to the CPRA (Gov. Code § 6250, et seq.), individual citizens have a right to access government records. In enacting the CPRA, the California Legislature declared that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (Gov. Code, § 6250; see also County of Los Angeles v. Superior Court (2012) 211 Cal.App.4th 57, 63.) To facilitate the public's access to this information, the CPRA mandates, in part, that:

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[E]ach state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available . . .
." (Gov. Code § 6253(b).)

The CPRA defines "public records" submit to its provisions as follows:

(e) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975. (Gov. Code § 6252(e).)

"The definition is broad and intended to cover every conceivable kind of record that is involved in the governmental process." (Community Youth Athletic Center v. City of National City (2013) 220 Cal.App.4th 1385, 1418.) "Records requests ... inevitably impose some burden on government agencies. An agency is obliged to comply so long as the record can be located with reasonable effort." (Id. at 1425.)

While the CPRA provides express exemptions to its

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disclosure requirements, these exemptions must be narrowly construed and the agency bears the burden of showing that a specific exemption applies. (Sacramento County Employees' Retirement System v. Superior Court (2013) 195 Cal.App.4th 440, 453.)

Analysis

In his writ briefs, Petitioner contends that Respondent did not conduct a reasonable search for the requested emails. Primarily in reply, Petitioner contends that Respondent has not justified its claimed exemptions. (Reply 8-9.)

Reasonableness of Respondent's Search

Petitioner argues that Respondent's search was unreasonable because: (1) Respondent "had months of unreasonable technical and logistical problems"; (2) Respondent produced numerous duplicative and non-responsive records, including emails from outside the requested time-frames; (3) Petitioner obtained responsive emails from other agencies, which were not produced by Respondent; and (4) Respondent's statements about the search are not credible, and Respondent had a motive to withhold responsive records.

Before assessing these arguments, the court notes that Schechter asserts in her declaration that

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all responsive records were produced to Respondent's attorney, Briggs. She states that she conducted a search herself, and that "nothing we possessed was not sent to counsel." (Schechter Decl. ¶ 3.) The search conducted after this petition was filed resulted in no additional records from Schechter's computer system, but a few printed emails in an old file folder were found. (Id. ¶ 4.)

The court also rejects at the onset Respondent's arguments about Petitioner's motives, and his alleged practice of inundating the City with CPRA requests. (See Oppo. 12-14.) The CPRA "does not allow limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure." (Gov. Code § 6257.5.) While an agency may withhold records for which a statutory exemption applies, the requestor's purpose in seeking the records is irrelevant. (See County of Los Angeles v. Sup.Ct. (2000) 82 Cal.App.4th 819, 826.) For this reason, Petitioner's response in reply about his use of the records is also irrelevant. (Reply 2-4.)

Timing of Production, and Inclusion of
Non-Responsive Records

While relevant, the timing of Respondent's document productions, and Respondent's over-inclusion of duplicates or emails from outside the requested

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time-frame, do not establish in themselves an unreasonable search. Briggs notified Petitioner that producing the emails, and reviewing them for exemptions, would take time. Petitioner acknowledged the amount of work involved, and stated "please don't worry about the delay." (AR 41, 55.) Briggs also explained that the inclusion of more emails than requested "was convenient for prompt review." (AR 81.) While overproducing records does not cure a failure to produce all responsive records (see Reply 10), it also does not clearly show an attempt to conceal records, especially where Briggs notified Petitioner of the overinclusion. Similarly, Briggs adequately explained the time delays. The court also notes that Petitioner has not submitted with his record exemplars of the responsive emails that were produced by Schechter, and those that Petitioner contends are duplicative.

Responsive Schechter Emails Obtained from other Agencies

The responsive emails Petitioner obtained from the City, but that were not produced by Respondent, were from four City entities: Council District 4, Council District 13, the City Clerk, and LADOT. (Reply Riskin Decl. ¶ 4.) With those four entities, Schechter sent and received approximately 23 emails between October 16 and October 30, 2015, 5 emails in November 2015, and 18 in December 2015. (Id. at ¶

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5.) Of those sent in October, 14 were sent on October 29 and 30. (Ibid.; see AR 14-36.) At her deposition, Schechter testified that from the time she began work on October 1, 2015 to December 8, 2015, a little over two months, she sent "not a lot" of emails, "maybe 100." (Schechter Depo. 33:16-22; AR 143.) She was new at the job, was touring and learning about the district, and did not send a lot of emails. She also had problems sending and receiving emails, and deleted emails with photographs that took up too much space. (Ibid.; Schechter Decl. ¶ 2.)

When asked about what emails she deleted to make more space on the server, Schechter responded that she deleted emails with large-size attachments such as photo files. (AR 159; Schechter Depo. 44.) She was asked if she deleted "any other e-mails besides emails with large photo files and large documents?" (Ibid.) At the deposition she answered, "[n]ot that I can remember." (Ibid.) She later amended her deposition transcript to read, "Not that I can remember specifically, but I am sure I did." (Ibid. [emphasis added].)

In her declaration, Schechter states "I do delete emails periodically, particularly notices, transmittals, duplicates or near duplicates, invitations, and materials concerning completed or abandoned projects if no longer useful." (Schechter

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Decl. ¶ 5.) She states that the emails contained in AR 14-36 "are the sort I periodically will delete for server space or because I have no need for them." (Ibid.)

Petitioner argues that Schechter's testimony that she would have deleted the emails at AR 14-36, and that she sent only 100 emails early in her tenure, is not credible. (Reply 5-6.) A review of these emails gives the court some pause. Some emails are substantive in nature, not simply notices or invitations, and do not contain large photographs. (See e.g. AR 18-26.) While Schechter apparently asserts she deleted them because they involve completed or abandoned projects, she does not provide a specific explanation for deleting these substantive public records.

On the other hand, these emails were sent early in Schechter's tenure with Respondent. Many of these emails introduce Schechter as the executive director of Respondent. In that context, it seems plausible that Schechter would have sent a large number of emails on October 29 and 30, and also that she would have deleted these emails.

Petitioner has not persuasively challenged Schechter's testimony that she did not send a lot of emails early in her tenure because she was touring the district and "getting her feet wet." (AR

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143-144.) It seems possible that Schechter would have sent "not a lot" of emails (approximately 100) in her first few months of work.

Significantly, Petitioner has not asserted a persuasive reason why Schechter would withhold the specific emails produced by other agencies. Petitioner does not argue that it is likely Respondent will find the specific emails at AR 14-36 if an additional search is ordered. Petitioner's failure to identify a motive for Schechter to withhold these specific emails weakens his broader arguments that Respondent conducted an unreasonable search, and did not produce other (unspecified) emails.

Respondent's Statements about Search, and Motive to Withhold Documents

Petitioner criticizes Briggs' September 26, 2017 email on the grounds that it fails to identify when the search was conducted, who conducted it, what computers were searched, and what search criteria were used. (Opening Brief 10.) Briggs did respond to Petitioner's questions about the search in his email. (AR 67.) Moreover, at her deposition, Schechter provided a relatively detailed description of the search criteria and procedure used to respond to the March 18, 2016 CPRA request. (AR 145.) Petitioner has not argued that Respondent used

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deficient search terms or that the search method was technically deficient in some way. This weakens his argument that the search was inadequate.

In reply, Petitioner argues for the first time that Respondent had a motive to withhold responsive records because Petitioner had published articles about "revolving door" lobbying of City Council members. (Reply 6-7.) Petitioner now states that he believes Schechter violated City's ethics rules by engaging in such conduct. He surmises that Schechter knew Petitioner intended to expose such ethics violations, and therefore withheld responsive records. This argument should have been raised in the moving papers and could be disregarded as a new issue raised in reply. (Regency Outdoor Advertising v. Carolina Lances, Inc. (1995) 31 Cal.App.4th 1323, 1333.) In any event, the court finds the argument to be conclusory and speculative. The court finds it unpersuasive on the merits.

Respondent's Search after 11/28/17 Hearing

In its November 28, 2017 order, the court ordered Respondent "to review all files from the latest search to ensure that all responsive documents have been produced." After the hearing, Petitioner's counsel offered to send Respondent's attorney all files he had produced to Petitioner since 2016. Petitioner's counsel sent these files to

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Respondent's counsel, via a DropBox file, on December 4, 2017. Respondent's counsel received and reviewed these files from Petitioner. (See Suppl. Flynn Decl. ¶ 3, Exh. B; Suppl. Briggs Decl. ¶ 3.)

Respondent's counsel describes his records review in response to the November 28, 2017 order as follows:

I then went through each record retrieved from Respondent's searches and looked for it in the records provided by Petitioner. This is no mean feat, and took considerable time; the records include, for example, hundreds of "MYLA311" form requests and responses for trash removal and all manner of other city services, as well as hundreds of broadcast email notices from city officials about all manner of events and information, making this more detailed comparison extremely time-consuming and burdensome in light of the previous similar effort already undergone.

The comparison I performed as described above found no non-exempt records that had not already been produced to Petitioner in the original responses to the subject PRAs. Indeed, in performing the comparison I found electronic copies of records I provided Petitioner in hard copy just before trial (in the course of his requested re-search)

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DEPT. 82

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 01/30/18

DEPT. 82

HONORABLE MARY H. STROBEL

JUDGE

N. DIGIAMBATTISTA

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

2

B. HALL C.A.

Deputy Sheriff

J HOLLIFIELD CSR 12564

Reporter

9:30 am

BS166075

Plaintiff

Counsel

COLLEEN FLYNN (X)

ADRIAN RISKIN

VS

Defendant

HOLLYWOOD MEDIA DISTRICT PROPER
OWNER ASSOCIATION

Counsel

JEFFREY C. BRIGGS (X)

NATURE OF PROCEEDINGS:

thinking in good faith that these hard-copy records were additional to the many "MyLA311" and city notice records already provided. But the new comparison proved me wrong: all those "additional" records in fact had been produced originally. (Suppl. Briggs Decl. ¶¶ 3-4 [bold underline added; italics in original].)

Respondent's supplemental declaration provides sufficient evidence that Respondent complied with the court's November 28, 2017 order to "review all files from the latest search to ensure that all responsive documents have been produced." This declaration also supports that Respondent has produced all responsive records to which Respondent has not claimed an exemption.

Petitioner argues that Respondent's "subsequent search" 1 was inadequate, and the court should order Respondent to produce a "log/index of emails" located during the search. (Suppl. Reply 4-6.) Petitioner states: "Respondent used different parameters for its initial search, conducted in 2016, than for its subsequent search, conducted shortly before the November 28, 2017 hearing. Parameters differed as to date range & sender/recipient." Petitioner also points out that the court ordered Respondent to conduct an additional review based on statements made by Respondent's counsel at the November 28, 2017

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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hearing.

At the November 28, 2017 hearing, Respondent's counsel explained his search process and represented that "I certainly went back and looked at what records I had as to what was produced." He stated that he "didn't go page by page ... but [he] did look at what was produced." (Suppl. Flynn Decl. Exh. A.)

The court did not order Respondent to produce records that had already been produced, but rather "to review all files from the latest search to ensure that all responsive documents have been produced." Respondent's counsel has represented that he reviewed the files supplied by Petitioner's counsel, compared those to each record retrieved from Respondent's searches, and found no non-exempt records that had not already been produced. (Suppl. Briggs Decl. ¶¶ 3-4.) The court is satisfied by this declaration.

The court analyzes below Respondent's claimed exemptions. Petitioner has not proven that Respondent's search was inadequate.

Claimed Exemptions

Respondent has admittedly withheld records based on exemptions for personnel records, the deliberative process exemption, and the attorney-client and work-product exemptions. (See AR 65, 67, 81.) The

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agency bears the burden of showing that a specific exemption applies. (Sacramento County Employees' Retirement System v. Superior Court (2013) 195 Cal.App.4th 440, 453.) Respondent has made no argument to justify the claimed exemptions in its opposition brief or its CPRA correspondence with Petitioner and his counsel. 2

The agency claiming the exemptions must make a sufficient showing to justify the in camera review. (See e.g. Gov. Code § 6259(a); see American Civil Liberties Union of Northern Cal. V. Sup. Ct. (2011) 202 Cal.App.4th 55, 74 ["Because the agency opposing disclosure bears the burden of proving that an exemption applies," it has the burden to submit evidence, including for in camera review]; see also Id. at 87 ["a trial court's prerogative to inspect documents in camera 'is not a substitute for the government's burden of proof, and should not be resorted to lightly'"].)

As a preliminary step, a court may order the agency to prepare a list of responsive records for which it claims exemptions, and the specific exemptions claimed for each record. (See Haynie v. Sup. Ct. (2001) 26 Cal.4th 1061, 1072-1072.)

Here, in order to assess whether in camera review should be permitted, the court ordered Respondent to produce a privilege log identifying

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HOLLYWOOD MEDIA DISTRICT PROPER
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the responsive records it has withheld and the claimed exemptions for each record. The court also ordered Respondent to submit a supplemental opposition regarding its claimed exemptions. On January 11, 2018, Respondent filed its "report and exemption log" and declaration of attorney Jeffrey Briggs. Respondent did not provide substantive legal briefing in support of its claimed exemptions.

Attorney-Client Privilege / Work Product
Doctrine

The attorney-client privilege allows the client or the client's attorney "to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer" (Evid. Code § 954; see also § 952.) "The burden of showing preliminary facts necessary to support the privilege lies with the party claiming it." (Wellpoint Health Networks, Inc. v. Superior Court (1997) 59 Cal.App.4th 110, 123-124.) The court may not review the emails in camera to make a determination as to the attorney-client privilege. (Evid. Code § 915(a).)

"In California, an attorney's work product is protected by statute. [Citation.] Absolute protection is afforded to writings that reflect 'an attorney's impressions, conclusions, opinions, or legal research or theories.' (§ 2018.030, subd.

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(a.) All other work product receives qualified protection; such material 'is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice.' (§ 2018.030, subd. (b).)" (Coito v. Superior Court (2012) 54 Cal.4th 480, 485.)

Here, Respondent has identified 11 emails that it withheld based on the attorney-client privilege or work product doctrine. (Suppl. Brigs Decl. ¶¶ 5-6.) Petitioner argues that Respondent's privilege log contains insufficient information to assess these privileges. (Suppl. Reply 10.) With the exception of two emails discussed below, Petitioner has not identified what additional information is required. Respondent has identified the dates of the emails, the parties thereto, the topic, and the privileges involved. Except as to the two emails identified below, the court is not persuaded that additional information is required. The emails identified by Respondent are communications between attorney Briggs and his client, and appear to be covered by the attorney-client or work-product privileges.

The court may not review the emails in camera to make a determination as to the attorney-client privilege. (Evid. Code § 915(a).) Petitioner has not shown that in camera inspection should be

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allowed to assess Respondent's claim that the absolute or qualified work product privileges apply. (See Costco Wholesale Corp. v. Sup. Ct. (2009) 47 Cal.4th 725, 736-37.)

Briggs' declaration indicates that a "vendor" was included in two of the emails claimed to fall under the attorney-client privilege. (Suppl. Briggs Decl. ¶ 5, No. 2, 11/6/15 email and ¶ 6, No. 21, 3/9/16 email.) Respondent has not submitted evidence of the identity of this vendor or why the vendor was included on the email. Respondent does not clearly show that the vendor was "reasonably necessary for the accomplishment of the purpose for which the lawyer ... was consulted." (Evid. Code § 912(d).)

Respondent's counsel should be prepared to address these issues regarding the vendor at the hearing. (See Suppl. Briggs Decl. ¶ 5, No. 2, 11/6/15 email and ¶ 6, No. 21, 3/9/16 email.) In all other respects, Respondent has justified withholding the identified emails based on the attorney-client and work-product privileges. Therefore, Respondent is not required to disclose those emails. (See Suppl. Briggs Decl. ¶ 5, Nos. 1, 3-6 and ¶ 6, Nos. 1-3, 22.)

Deliberative Process Privilege / Privilege for Agency Drafts and Notes

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"Under the deliberative process privilege, senior officials of all three branches of government enjoy a qualified, limited privilege not to disclose or to be examined concerning not only the mental processes by which a given decision was reached, but the substance of conversations, discussions, debates, deliberations and like materials reflecting advice, opinions, and recommendations by which government policy is processed and formulated." (Citizens for Open Government v. City of Lodi (2012) 205 Cal.App.4th 296, 305) The party claiming the privilege must show that "the public interest in nondisclosure clearly outweighs the public interest in disclosure." (Id. at 306; see also Times Mirror Co. v. Sup. Ct. (1991) 53 Cal.3d 1325, 1344, citing Gov. Code § 6255.)

Government Code section 6254(a) provides a CPRA exemption for "preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure." (emphasis added.)

Respondent has identified multiple emails that it withheld based on the deliberative process privilege. For some of these emails, Respondent also asserted that they are privileged drafts. (Suppl. Briggs Decl. ¶¶ 5-6.) Respondent's counsel has

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provided general descriptions of the email topics, but has not sufficiently explained in his declaration or legal brief why Respondent believes the public interest in nondisclosure clearly outweighs the public interest in disclosure. Also, for the drafts privilege in section 6254(a), Respondent does not cite evidence that the documents "are not retained by the public agency in the ordinary course of business." In the supplemental reply, Petitioner represents that Respondent already produced 7 of the 20 emails for which Respondent asserts the deliberative process or draft privileges. If that is true, it would undermine Respondent's assertion of the deliberative process and draft privileges for those specific emails and, potentially, more generally as well. (See Suppl. Reply 7-8.)

The court concludes that, on this record, Respondent has not justified withholding any emails based on the deliberative process and draft privileges.

Privacy Exemption

As indicated in Petitioner's supplemental reply, Respondent has withheld two emails based on a personnel privacy exemption. Petitioner does not challenge that part of these emails may include exempt private information, but argues that Respondent must produce the non-private parts.

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(Suppl. Reply 9-10 and fn. 6.) Petitioner is correct.

"The fact that parts of a requested document fall within the terms of an exemption does not justify withholding the entire document." (ACLU Foundation v. Deukmejian (1982) 32 Cal.3d 440, 458.)

For the 2/15/16 email for which Respondent asserted a privacy exemption, Respondent also asserts the deliberative process privilege. The court rejects the assertion of the deliberative process privilege for failure to show that the public interest in nondisclosure clearly outweighs the public interest in disclosure, as discussed above. Respondent may redact the private personnel and health information from this email, but must produce the remainder of the email.

For the 2/29/16 email for which Respondent asserted a privacy exemption, Respondent has only asserted a privacy exemption with regard to a volunteer's private address. Respondent therefore must produce this email with the volunteer's address redacted.

Conclusion

Petitioner has not proven that Respondent's search was inadequate.

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Respondent's counsel should be prepared to address at the hearing the attorney-client or work-product emails that included a vendor. (See Suppl. Briggs Decl. ¶ 5, No. 2, 11/6/15 email and ¶ 6, No. 21, 3/9/16 email.) In all other respects, Respondent has justified withholding the identified emails based on the attorney-client and work-product privileges. Therefore, Respondent is not required to disclose those emails. (See Suppl. Briggs Decl. ¶ 5, Nos. 1, 3-6 and ¶ 6, Nos. 1-3, 22.) Respondent need not produce the two documents for which the attorney-client privilege is asserted which include communication to a vendor.

On this record, Respondent has not justified withholding any emails based on the deliberative process and draft privileges. Respondent must produce those emails, unredacted except as stated below as to private information. (See Suppl. Briggs Decl. ¶ 6, Nos. 4-11, 13-20, 23-26.)

For the 2/29/16 email for which Respondent asserted a privacy exemption, Respondent must produce this email but may redact the volunteer's address. (Suppl. Briggs Decl. ¶ 6, No. 12.) For the 2/15/16 email for which Respondent asserted a privacy exemption, Respondent may redact the private personnel and health information from this email, but must produce the remainder of the email. (Suppl. Brigs Decl. ¶ 6, No. 9.)

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FOOTNOTES:

1- Although Petitioner also refers to a "subsequent search" conducted prior to the November 28, 2017 hearing, the court understands this argument as directed at the search conducted after the November 28, 2017 hearing.

2- Petitioner's opening brief focused on the reasonableness of Respondent's search, and not the exemptions. However, Petitioner did request in camera review. (OB 11.) Petitioner also expressly stated that "Respondent has not established any of its claimed exemptions." (Ibid.) At the hearing on November 28, 2017, Petitioner's counsel stated clearly that "petitioner challenges all of the claimed exemptions." (Suppl. Reply Exh. A.)

Counsel for petitioner is to give notice and prepare, serve and lodge the proposed judgment and/or final order by February 13, 2018. The court will hold the proposed document ten days for objections unless approved as to form and content by counsel for respondent.

01/30/18 09:30 AM

1 **Proof of Service**

2 I am employed in the County of Los Angeles, State of California. I am over the age of
3 eighteen and not a party to the within action. My business address is 3435 Wilshire
4 Blvd., Suite 2910, Los Angeles, CA 90010.

5 On February 7, 2018, I served the within document(s) described as **Petitioner's**
6 **Notice of Ruling** on the interested parties in this action as stated below via e-mail at
jbriggs@jbriggslaw.com.

7 I declare under penalty of perjury under the laws of the State of California that
8 the foregoing is true and correct.

9 Executed on February 7, 2018, at Los Angeles, California.

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11 _____
12 Colleen Flynn
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